



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,850	08/18/2003	Cynthia H. Nordness	KCC-15,611.1	4040
7590 12/11/2007				
Pauley Petersen & Erickson Suite 365 2800 W. Higgins Road Hoffman Estates, IL 60195				
			EXAMINER ANDERSON, CATHARINE L	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 12/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED
DEC 11 2007
GROUP 3700

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/642,850
Filing Date: August 18, 2003
Appellant(s): NORDNESS ET AL.

Mark D. Swanson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4 September 2007 appealing from the Office action mailed 22 March 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,037,416	ALLEN et al	8-1991
4,990,147	FREELAND	2-1991

2002/0028624

MIZUTANI et al

3-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 7-12, 14-20, 22-29, 32-37, and 40 are rejected under 35

U.S.C. 102(b) as being anticipated by Allen et al. (5,037,416).

With respect to claims 1, 20, 27-28, and 34-36, Allen discloses an absorbent garment, as shown in figure 1, having a waist opening and leg openings. The absorbent garment comprises a composite structure including a liquid-permeable body side liner (shown in figure 6 but not numbered), an outer cover 16, and an absorbent assembly 18. A continuous mesh liner 12 is attached to the composite structure with no intervening layers between it and the body side liner, as shown in figure 6. The mesh liner 12 is coextensive with the composite and attached to the composite around its perimeter, as disclosed in column 3, lines 35-39. The mesh liner 12 is unattached to the composite in the central region, as disclosed in column 12, lines 63-64. The garment further comprises a pair of containment flaps 50, as shown in figure 2.

With respect to claim 2, the mesh liner comprises a nonwoven material, as disclosed in column 6, lines 27-30.

With respect to claim 3, the nonwoven material is polypropylene, as disclosed in column 9, line 48.

With respect to claim 7, the mesh liner comprises two layers of material, as disclosed in column 6, lines 27-28.

With respect to claims 9 and 22, the mesh liner is a nonwoven and therefore permeable to liquids but not to bowel material.

With respect to claims 10-12 and 23, the mesh liner has a basis weight of 25 gsm, as disclosed in column 6, line 36.

With respect to claims 14-17 and 25, the mesh liner has a tensile strength of at least 19 pounds per 4 inches, as disclosed in column 6, lines 35-36.

With respect to claims 18-19, an elastic strand 19 is attached under the mesh liner 12 and adjacent the body side liner, as shown in figure 2.

With respect to claim 26, the absorbent garment, including the mesh liner, is folded from a flat state, shown in figure 2, to form a pant-like garment, shown in figure 1.

With respect to claims 29 and 37, the mesh liner comprises a spunbond web, as disclosed in column 6, line 30.

With respect to claim 32, the mesh liner is attached to the liquid-permeable layer, as shown in figure 6.

With respect to claims 33 and 40, the garment is fully capable of functioning as a swim pant.

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen et al. (5,037,416) in view of Freeland (4,990,147).

Allen discloses all aspects of the claimed invention with the exception of the mesh liner being nylon. Freeland teaches that polyurethane nonwoven materials, such as polypropylene and polyethylene, and nylon are suitable and equivalent material for

use as the liner of an absorbent garment, as described in column 3, lines 56-68. It would therefore be obvious to one of ordinary skill in the art at the time of invention for the mesh liner of Allen to comprise polyethylene or nylon, since it has been held that these materials are equivalent to polypropylene, as evidenced by Freeland.

Claims 5, 30, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen et al. (5,037,416) in view of Mitzutani et al. (US 2002/0028624 A1).

Allen discloses all aspects of the claimed invention with the exception of a spunbond/meltblown/spunbond liner. Mitzutani teaches that polypropylene nonwoven materials and SMS webs are suitable and equivalent material for use as the liner of an absorbent garment, as described in paragraphs [0070-0071]. It would therefore be obvious to one of ordinary skill in the art at the time of invention for the mesh liner of Allen to comprise a polyethylene nonwoven or an SMS web, since it has been held that these materials are equivalent to polypropylene, as evidenced by Mitzutani.

Claims 13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen et al. (5,037,416).

Allen discloses all aspects of the claimed invention with the exception of the hole size of the mesh liner. Allen discloses the mesh liner is a nonwoven material, which is inherently porous. It would therefore be obvious to one of ordinary skill in the art at the time of invention to make the hole size of the mesh liner in a range of 147-5810 microns, since it has been held that where the general conditions of the claim are

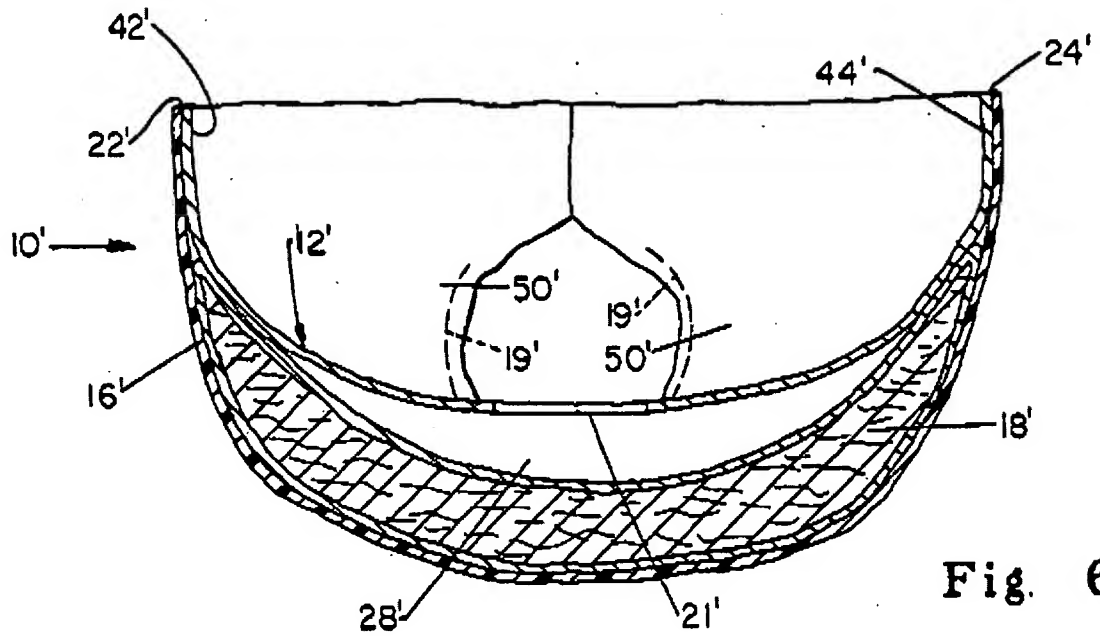
disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art.

(10) Response to Argument

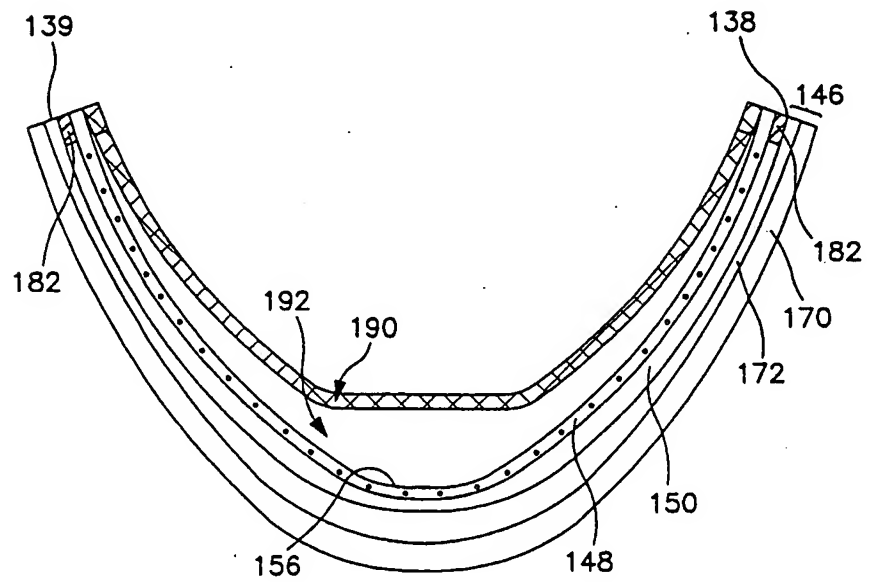
In response to the Appellant's argument that Allen fails to disclose a mesh liner separate from the body side liner, it is noted that Allen discloses two material layers on the body-facing side of the absorbent assembly, as shown in Figure 6, which is reproduced below. The mesh liner of Allen is designated by number 12', while the body side liner is the layer located between the liner 12' and the absorbent assembly 18' (shown but not numbered). While Allen describes the liner 12' as a 'topsheet,' the element designated by 12' fulfills all the claimed limitations of a mesh liner. The liner 12' comprises a porous, nonwoven material, and therefore fulfills the definition of 'mesh.' The liner 12' is attached at the periphery of the article, but unattached in the central portion, thus forming an unattached space between the liner 12' and the absorbent assembly. The liner 12', being a porous nonwoven material, is fully capable of being permeable to sand, and is coextensive with the composite structure comprising the absorbent assembly 18 and the outer cover 16. Therefore, regardless of the name given in the specification of Allen, the liner 12' fulfills the limitations of the mesh liner as disclosed in the present claims.

Figure 6 of Allen is shown below in contrast with Figure 7A from the Appellant's specification:

Prior Art:



Appellant's:



It is noted that the mesh liner 12 of Allen comprises both layers 13a and 13b, thus fulfilling the limitations of present claim 7 that the mesh liner comprises at least two layers of material.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

C. Lynne Anderson



Conferees:

Tanya Zalukaeva

Patricia Bianco

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER



PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700